

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMON CEPEDA,

Plaintiff,

- against -

DEPUTY SUPERINTENDENT
LOUDEN, V.C.B.C.; DEPUTY
SUPERINTENDENT JONES, V.C.B.C.;
DEPUTY SUPERINTENDENT CARTER,
V.C.B.C.; CAPTAIN WALDEN, V.C.B.C.;
and TANISHA MILLS,

Defendants.

ORDER

21-cv-4205 (ER)

RAMOS, D.J.:

Ramon Cepeda, brought this *pro se* action on May 7, 2021 under 42 U.S.C. § 1983, alleging that Defendants Linda Griffin, Warden, Vernon C. Bain Center (“V.C.B.C.”); Deputy Superintendent Louden, V.C.B.C.; Deputy Superintendent Jones, V.C.B.C.; Deputy Superintendent Carter, V.C.B.C.; Captain Walden, V.C.B.C.; and Tanisha Mills violated his Eighth and Fourteenth Amendment rights. Doc 2. On May 19, 2021 Cepeda was granted IFP status. Doc. 3. The Court ordered Cepeda to amend his complaint on May 21, 2021, Doc. 4, and the amended complaint was filed on September 24, 2021. Doc. 9.

On October 27, 2021, the Court requested that all Defendants waive service of summons. Doc. 11. The New York City Department of Correction (DOC) filed a waiver of service of summons executed for Defendants Louden, Carter, and Jones on October 27, 2021. Doc. 13. DOC also filed a waiver of service returned unexecuted, stating that Defendants Griffin and Walden were no longer employed with the DOC. Doc. 14.

On January 7, 2022, the Court issued an order directing the New York City Law Department to ascertain where Defendants Griffin and Walden may be served. Doc. 16. On March 8, 2022, the New York City Law Department provided the addresses for Defendant Walden and informed the Court that Griffin had retired before the time period in which Cepeda's allegations occurred. Doc. 19. The letter further provided that the current Warden is Tanisha Mills and Mills' address. *Id.*

In light of the information provided by the New York City Law Department, on March 9, 2022, the Court directed the Clerk of Court to, among other things, (1) issue a summons for Captain Walden and deliver all documents necessary to effect service on Walden to the U.S. Marshals Service; and (2) substitute Warden Tanisha Mills for Linda Griffin. Doc. 20. The Court also extended the time to serve until 90 days after the date the summons is issued and directed Cepeda to request an extension of time for service if the complaint was not served within that time. *Id.* Service was attempted on Walden on May 26, 2022, but was unsuccessful.

On June 24, 2022, with Cepeda not having requested an extension of time for service as to Walden, the Court directed him to submit a status report regarding the status of service no later than July 8, 2022. Doc. 23. The Court also repeated its request that Mills waive service of summons. *Id.* Again, on October 7, 2022, the Court directed Cepeda to submit a status report regarding the statues of service on Walden by November 7, 2022, and warned that failure to comply with this Court order would result in sanctions, including dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b). Doc. 27. To date, Cepeda has not filed a status report.

For the reasons set forth above, the Court dismisses this case against Captain Walden for failure to execute service under Federal Rule of Civil Procedure 4(m). Rule 4(m) provides that

“[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—*must* dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m) (emphasis added).

Accordingly, it is hereby ORDERED that the above-captioned action is dismissed without prejudice as to Captain Walden. **An initial pre-trial conference will be held on April 19, 2023 at 2:00 p.m.** via telephone conference. The parties are instructed to call the Court at (877) 411-9748 and use access code 3029857# when prompted.

SO ORDERED.

Dated: March 27, 2023

New York, New York



Edgardo Ramos, U.S.D.J.